CRIMINAL ATTEMPT. — In *People* v. *Gardner* (25 N. Y. Supp. 1072, Supr. Ct.) an interesting question was raised in the law of attempt. By the New York Penal Code, § 552, "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right." By § 34, "an act done with intent to commit a crime, and tending, but failing, to effect its commission, is an attempt to commit that crime." In the actual case, a police officer tried to extort money from a person who was not put in fear by his threats, but was acting as a mere decoy to inveigle him into the commission of the crime. On this state of facts the court held that there was no attempt, as the completion of the act was in itself an impossibility, since fear, a necessary element of the crime, was wanting.

Some objections to this decision were presented in 7 HARVARD LAW REVIEW, 435, and it has since been overruled by the Court of Appeals of New York in the case of *People* v. *Gardner* (38 N. E. R. 1003).

The ultimate possibility of success is not, as was thought in the lower court, the only test of an attempt (*Comm.* v. *McDonald*, 5 Cush. 365), but is merely one of a variety of considerations which must be kept in mind when the question is one of criminal attempt. Given the intent, the problem is what constitutes the guilty act; and the solution depends on the greater or less extent to which the deed committed is to be regarded as a menace to the public (1 Bish. Crim. Law, § 737). To determine this, the case must be scrutinized in various lights. Is the act of sufficient magnitude, is there a distinct public policy involved, is there an infringement on personal or property rights, is the act near completion in time and place, are the means adapted to the end from a reasonable man's standpoint, and what that standpoint should be, — are all, as well as the question of ultimate possibility of success, important tests by which to determine the criminal act. These considerations are not, of course, always of equal weight, but shift and group themselves into infinite kaleidoscopic arrangements, in which the respective relations of the various rules are never stable. If the act is in its nature unequivocal, as the procurement of counterfeiter's dies, it would be found criminal more readily than if it can be easily explained on an hypothesis of innocence (May, Crim. Law, § 183), and if the act merely fails because the intended victim is not to be duped, as in cases of trying to obtain money under false pretences, the law is pretty clearly settled that the mere impossibility of success will not prevent the act being a crime (2 Bish. Crim. Law (8th ed), § 488). It would seem that the case of extortion is closely analogous to that of false pretences, and the decision of the Court of Appeals is one which will be welcomed as expounding the better view upon the subject.

DOES QUASI-CONTRACT LIE FOR A SAVING? — The United States Government gave a paving contract to the lowest bidder, after fair warning that the saving thus effected would be due to infringement upon a patent held by one Schillinger for a process of laying pavements.

Schillinger brought an action in the Court of Claims, and as the United States permits itself to be sued only in "contract express or implied," it was necessary for him to show that his case contained the elements of such an implied or *quasi* contract as the courts will allow to be included under that head. In the Court of Claims the decision was against him, and now, on appeal, the Supreme Court confirms that

decision upon various grounds. *Schillinger* v. *United States*, 24 Ct. of Claims, 278; 15 Sup. Ct. Rep. 85. In the first place, it is objected that the construction of the words "contract express or implied" has always in this connection been limited to cases where there was a possibility of inferring a contract implied in fact, although the cases seem to show that it had not been thought necessary to show the fact of real contract, but only the possibility. *United States* v. *Great Falls Co.*, 112 U. S. 645; *Great Falls Co.* v. *Garland*, 124 U. S. 581. It is submitted that although the construction of a statutory phrase like the one in question is not a matter for strict logic, it would be better either to stop at real contracts, or to go on to all cases of unjust enrichment, and so not sacrifice the right to the form of the remedy.

It is, however, asserted by the court that there is no unjust enrichment, and a case is put which, though extreme, is a fair test of the principle. "Take for illustration," says Mr. Justice Brewer, delivering the opinion of the court, "a patented hammer or trowel. If a contractor, in driving nails or laying bricks, use such patented tools, does any patent-right pass into the building and become a part of it?" It is submitted that if the building contract were let at a low price, and it were known that the saving was due to a patented trowel which the contractor intended to use in defiance of the patentee, the owner of the completed building would be saved money by the violation of the patent. The government, says Mr. Justice Brewer, is not "in possession or enjoyment of anything" of the plaintiff's. That is, nothing has passed into the building; but what does that matter? There may be no authority in the printed reports for the truth that a penny saved is a penny earned, but has any one ever tried to controvert that saying of Poor Richard's with success? And would not a penny unjustly saved weigh as much in the pocket and on the conscience of an honest man? It is submitted that it would, and that an honest Government ought to be in no better position.

"ACCEPTANCE" OF A CHECK — WHAT IS FORGERY. — In *First Nat. Bank* v. *Northwestern Nat. Bank*, 38 N. E. Rep. (Ill), it appeared that a certain person under the name of W. S. C., Treas., drew a check on the plaintiff bank, payable to "C. H. W., Asst. Gen. Supt." (a real person). Some person unknown wrote on the check the signature of "C. H. W. Asst. Gen. Supt.," and the check was presented to the plaintiff, who indorsed it "Accepted, payable through Chicago Clearing House, Northwestern Nat. Bank, per S., Teller." The check was placed in the hands of C. & G., who delivered it to the defendant Bank, who indorsed it and presented it for payment through the clearing house. The plaintiff soon after payment discovered the "forgery," tendered the check to the defendant demanding back the money, and the defendant refusing, the plaintiff brought this action of assumpsit. It was held that the drawee who had paid the bank check could recover back the money so paid on discovery of the "forgery," the demand for repayment being made within a reasonable time after the discovery of such "forgery." The "acceptor" of a check was said to be estopped to deny the genuineness of the drawer's signature by his acceptance, but not to deny the genuineness of any indorsements on the instrument.

The doctrine is perfectly sound that a drawee who pays to a holder claiming under a forged indorsement may recover back the money as paid